

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Mauri HILLO et al.

Serial No.: 10/538,029

Filed: June 8, 2005

For: Method for Use in a Conveyor and Conveyor

Examiner: Ramya G. PRAKASAM

Group Art: 3651

Commissioner for Patents
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

SIR:

This is a Request for a Panel Review of Issues on Appeal. A Notice of Appeal is filed concurrently herewith in response to the final Office Action dated March 17, 2009. No amendments are being filed with this Request.

Arguments supporting the Request for Review begin on page 2 of this communication.

ARGUMENTS

Claims 11 to 41 are pending in the application, among which claims 16, 19, 25, and 28 have been withdrawn from further consideration. Claims 11, 21, and 41 are independent claims.

The matter to be reviewed in this Request is whether U.S. Patent No. 5,743,375 to Shyr (Shyr) is correctly interpreted to read on the claimed subject matter in the final Office Action.

Independent claim 21 is not disclosed by Shyr

Independent claim 21 recites, at least, “an elevating roll assembly positioned at a second section of the transport path below the conveyor belt or chain” and “operable to raise a portion of the top surface of the conveyor belt or chain to form an elevation above the remaining portion of the top surface of the conveyor belt or chain.” The above recited claim features of independent claim 21 are not taught by Shyr because neither chain 72 nor rollers 76 in Shyr read on “the elevating roll assembly” recited in independent claim 21.

The Office Action interprets the chain 72 of Shyr to be the “conveyor belt or chain” and interprets the chain 72 and/or the rollers 76 in Shyr to be the “elevating roll assembly” recited in independent claim 21 (see last two paragraph on page 2 of the final Office Action). Without admitting or disputing such interpretation made in the Office Action, applicants submit that rollers 76 in Shyr are part of the chain 72. Consequently, neither the chain 72 nor its rollers 76 in Shyr can be positioned below the chain 72 itself. Accordingly, Shyr’s chain 72 and/or rollers 76 can not be interpreted as the claimed “elevating roll assembly.” Therefore, Shyr does not teach “an elevating roll assembly positioned at a second section of the transport path below the conveyor belt or chain,” as explicitly recited in independent claim 21.

Moreover, none of other components in Shyr’s conveyer transfer apparatus can be construed as “the elevating roll assembly” recited in independent claim 21. For example, the spindles 41, 42 and the associated eccentric sleeves 61, 62 in Shyr operate to raise or lower the

entire conveyer transfer apparatus and consequently cannot “raise a portion of the top surface of the conveyor belt or chain to form an elevation above the remaining portion of the top surface of the conveyor belt or chain,” as explicitly recited in independent claim 21. Accordingly, Shyr does not otherwise meet the above recited claim features of independent claim 21.

In view of all the above, independent claim 21 patentably distinguishes over Shyr. Withdrawal of the 35 U.S.C. § 102(b) rejection of independent claim 21 and its dependent claims 22-24, 26-27, and 29-40 is respectfully requested.

Independent claim 11 is not obvious over Shyr and Ruohio

Independent claim 11 recites the following (emphasis added):

*A method for separating **rolls of a roll set** traveling on a conveyor from each other, the conveyor comprising a conveyor belt or chain running about driving and tail pulleys, the method comprising:*

*transporting **the roll set** on a top surface of said conveyor belt or chain at a base level in a first section of a transport path between the driving and tail pulleys;*

forming an elevation in a second section of the transport path, the elevation comprising a raised portion of the conveyor belt or chain arriving at the second section of the transport path; and

*separating **the rolls** from each other when the rolls of the roll set are transported over the elevation by the conveyor belt or chain.*

According to independent claim 11, the same “**rolls of a roll set**” are both transported at a base level in a first section and separated from each other when being transported over the elevation in a second section.

The Office Action interprets the rollers 74 in Shyr as the “elevation” recited in independent claim 11 (see, fourth paragraph on page 4 of the Office Action). Without admitting or disputing such interpretation made in the Office Action, applicants submit that Shyr transports its articles 9 only over the raised portions of rollers 74, but not at a base level as recited in independent claim 11.

Shyr teaches a conveyer transfer apparatus for transferring articles 9 from the main conveyer 1 to a secondary conveyer 2 for diversion purposes (see, col. 2, ll. 16-20 and Figs. 6 and 8 of Shyr). The rollers 74, 76 in Shyr are part of the chain 72, which forms the conveyer transfer apparatus. When the conveyer transfer apparatus is activated to transport the articles 9, the raised portions of the rollers 74, 76 collectively carry the articles 9 loaded on the top surface of the conveyer transfer apparatus (see, Fig. 6). During operation of the conveyer transfer apparatus, the articles 9 are being transported at the same level of the raised portions of the rollers 74, 76. In other words, Shyr does not teach “transporting the roll set on a top surface of said conveyor belt or chain at a base level in a first section” as recited in independent claim 11.

Moreover, Shyr does not teach that articles 9 are separated from one another when they are transported over the rollers 74, 76 of the conveyer transfer apparatus. The articles 9 are, in fact, carried by the raised portions of the chain 72 the entire time during the operation of the conveyer transfer apparatus. Consequently, no article 9 in Shyr is or can be separated from other articles 9 when all such articles 9 are being transported on the conveyer transfer apparatus. Therefore, Shyr does not teach or suggest “separating the rolls from each other when the rolls of the roll set are transported over the elevation by the conveyor belt or chain,” as explicitly recited in independent claim 11.

Ruohio is cited in the Office Action as disclosing transporting rolls in a roll set as recited in independent claim 11 and does not remedy the above discussed deficiencies of Shyr. For example, if Shyr is used to transport Ruohio’s rolls, such rolls may be carried by both the raised and the lowered portions on the chain 72. In such a case, however, different rolls are carried by the raised and the lowered portions on the chain 72. Consequently, the combined Shyr and Ruohio still lack “transporting **the roll set** ... at a base level in a first section” and “separating **the rolls** from each other when the rolls of the roll set are transported over the elevation,” as

recited in independent claim 11. Accordingly, independent claim 11 is not taught by the combined Shyr and Ruohio.

In view of all the above, independent claim 11 patentably distinguishes over the combined art. Withdrawal of the 35 U.S.C. § 103(a) rejection of independent claim 11 and its dependent claims 12-15, 17-18, and 20 is respectfully requested.

Independent claim 41 is allowable

Similar to independent claim 11, independent claim 41 recites "separating the rolls from one another when the rolls of a roll set are transported to the elevation section by the conveyor belt or chain." Therefore, independent claim 41 is allowable for at least the same reasons that independent claim 11 is allowable.

Rejoinder of Claims 16, 19, 25, and 28

Independent claim 11 is generic to claims 16 and 19 and independent claim 21 is generic to claims 25 and 28. Therefore, upon allowance of independent claims 11 and 21, consideration of claims 16, 19, 25, and 28 is respectfully requested.

Conclusion

In light of the foregoing, claims 11 to 41 are believed to be in condition for allowance and notice to that effect is respectfully solicited.

Respectfully submitted,
COHEN PONTANI LIEBERMAN & PAVANE LLP

By /Alfred W. Froebrich/
Alfred W. Froebrich
Reg. No. 38,887
551 Fifth Avenue, Suite 1210
New York, New York 10176
(212) 687-2770

Dated: May 12, 2009